

Re: DALE FARM: New Remedies, new planning applications and useful case law, the LG Ombudsman, interested party ag...

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Dear All from Ann Dean phone 01273 731296,

I am 75 years old and a member of the National Romani Rights Association and very overworked by other Traveller cases, but the case of Dale Farm case will be such a shocking violation of the Human Rights of so many people, including the right to education, that I am very interested in helping as far as time permits. I got a Traveller Green Belt case into the High Court by myself with enough merit for Legal Aid, (no decision yet) but it was so much work unaided that my family forbade me to do another one, but I could edit one or write the letter of support. Sadly the Solicitor has removed the Human Right to Education from the case, but it is worth including in any Dale Farm case which has school age children and it could be a test case on this.

The solicitor at Basildon Council tells me that no one has made a recent planning application. I think that those with very special circumstances should do this, possibly with a press release with e-mailable photos to the Press Association. It is also worth trying for non-statemented children. A very good Planning Agent is Alison Heine, but of course she would have to be paid, but local volunteers might be able to do it if necessary. She knows a lot of Planning Appeal decisions. One which I teamed up from another case was the very useful Three Rivers Council Abbots Langley Appeal which got consent in the Green Belt mainly because the Council had made no provision for Travellers in its Local Plan, despite the Government guidance that it should and do so and, as the area was 100% Green Belt this unfairly meant that there was no land where Travellers could camp.

NB What percentage of the land outside urban areas in Basildon is Green Belt?

What luck has there been with the Local Government Ombudsman?

I have a letter from Basildon DC confirming that at the December meeting the Cabinet did choose Constant & Co to be the Bailiffs. I wrote an e-mail delivered to every member of the Cabinet asking them a few questions. I asked them NOT to choose Constant & Co because the High Court had condemned their conduct. Please could someone, maybe Exeter University send me the exact wording by the Judge and the paragraph of his Judgement and a copy of it and the folder about Constant & Co for the Ombudsman? for a letter of complaint to the Chief Executive who is supposed to be the "conscience of the council. It will give him a short deadline for a reply and then go straight to the Ombudsman. I hope it will be signed by Mary Sheridan and I will include other complaints such as unsuitable housing offers, like to many steps for an invalid to even view the flat and 1 bedroom flats for mothers with several children, plus mould on the walls due to damp.

The Council are justifying this by saying that they have no proof that the children exist but other Councils accept Birth Certificates, or ordinary Child Benefit letters. Basildon insists on a special Child Benefit letter which takes a long time to arrive. We need to discuss with their lawyer, Tom or Keith Lomax, how to handle this and exactly when to challenge it, as, if they are offered suitable houses of the correct size and refuse them, the Council will claim that they are intentionally homeless and will feel free to send in the Bailiffs and then offer the house to every other family in turn, unless the law permits them to accept it under protest as a temporary stop gap, but perhaps before that stage they could challenge by Judicial Review in the High Court.

a) that the Council does not have enough houses of the correct size for so many families.

b) that section 225 of the Housing Act 2004 requires Basildon DC, like all Councils, to locate enough sites for all the Travellers living in or resorting to their area who do not have planning consent, and Basildon is wrong to ask the High Court (in Basildon DC v Sec of State for Communities and Local Government) to quash the decision that they must locate an extra 62 pitches or yards:

c) as with the needs of the residents of Dale Farm and Hovefields and other unauthorised developments and sites probably more than 62 pitches will be needed or there will be a large number forced onto the roadside which the 2004 Housing Act and ODPM Circular 1/2006 are seeking to prevent.

d) It is most doubtful that Basildon DC could find suitable enough suitable locations to meet all the criteria for a suitable sites that they must be near schools, shops, doctors and schools etc and it would have to use the Green Belt for many of the extra pitches which makes it irrational and unjust to destroy pitches at great expense, hardship and misery because they are on the Green Belt, only to move them to another probably less sustainable part of the Green Belt.

e) in 2008 the High Court, in Wychavon DC v SSCGL and Butler, granted 5 years temporary consent in the Green Belt so the Butler family, because of the "time factor" so that the Butler family would have somewhere to live and so the children could go to school until the new pitches were deliverable, which the council had to locate by s225 of the Housing Act 2004 by February 2011. This included two years for slippage (delay). This complied with paragraphs 45-46 of ODPM Circular 1/2006 on granting temporary consent if more sites would be available in the not too distant future.

f) Also Paragraph 63 of Circular 1/2006 states that when there is a lack of provision of sites, this can be a defence against enforcement action and grounds for appeal against a refusal of planning consent.

Remedies

A I strongly think that one or more than one of the bodies or individuals which support Dale Farm ought to apply to join the court action by Basildon DC as "an interested party". Phoning the Treasury Solicitor to ask for a copy of the Council's Statement of Claim before definitely deciding and asking if the interested party can be exempt from paying costs "whatever the event" (win or lose). Keith Coughtrie says they do not usually have to.

B All or some of the Dale Farm and Hovefield Residents who can claim the very special circumstances which allow planning consent in the Green Belt should make a Planning application for their yard and everyone in it with the proviso that they should not all be refused if some of the occupiers do not qualify, but extended families should not be split as the 1996 Housing Act says that those who normally camp together should not be split. Their yard. They can only apply if they have not already made one in the last two years, unless they reduce the number of occupiers and of caravans.

NB I believe from reading the Judgement that the Court of Appeal decision does not prevent this for those with serious health needs, especially if they are on DLA and need relatives nearby to care for them and children who are statemented with very special education needs, especially if they need NHS speech therapy as this is not available on the roadside.

Refusals of previous planning applications if they were for a large number of yards and were decided before Circular 1/2006 might not prevent success, though genuine objections to highway safety might be a problem.

The planning fee is about £220 plus the cost of two OS plans. It is unreasonable to evict without waiting for the decision of the Planning Inspector (and then of the High Court if one's income is low enough for Legal Aid as the costs of the other side could be horrific, and if the case has merit.

One may lose even if one has the health problems above and even if another family with the same circumstances wins as it is a complete lottery as different Inspectors are allowed the "discretion" to decide differently unless they are irrational (illogical) or do not consider important things which they should consider and vice versa.

The most debatable point is whether the education needs of "normal" non-statemented children count as "very special circumstances. Some case law says that if there are no alternative sites this fact combined with school age children does amount to a very special circumstance. They are two High Court cases

Basildon DC v SSE and Appeal by Ouseley J in Dec 2000, unreported except in the JPL but I can e-mail a copy of the Judgement on request. It has a very useful definition of "very special" that it means very important and so it does not have to be the opposite of commonplace (but this is still a frequent mistake of Planning Inspectors who reject the needs of "normal" children as being commonplace. It also says that the education of Gypsy children is in the public interest and so is the need of elderly relatives to live near their children.

Basildon DC v Temple in 2004 by Sullivan J (it rebuts his *Chelmsford BC v Draper*, used by Councils as he says the Drapers lost because they left a secure site

DALE FARM MONITORING GROUPS: PREPARE FOR MULTIPLE EVICTIONS

During yesterday's visit (21 Jan) to Dale Farm by Essex police officers it was revealed that planning in respect of their role in the enforced eviction by Basildon District Council is in the hands of a *Special Services* group base at Boreham, near Chelmsford.

Chief Insp Simon Dobinson and Insp Richard Sage told Malcolm Tully, of Wickford Life Church, who organized the visit, that their job was basically to liaise with local communities, including residents at Dale Farm and Hovefields.

They have promised to furnish us with the names and contact details of the officers at Boreham. Our next task therefore will be to seek a full-scale meeting with those officers at which all issues relating to the policing of the threatened direct action operations can be frankly discussed, and hopefully agreement reached on curtailing the previous illegal and outrageous behaviour of Constant bailiffs.

Note that it is now more likely that BDC will resort to using Constant & Co bailiffs, who are believed to have been signed on for a two year contract, to launch a series of smaller eviction attempts against so-called *illegal* Travellers and Gypsies in the district.

This means that as well as being ready to come to Dale Farm to observe and monitor bailiff and police conduct (which would include observation of any prior agreement with Special Services), monitoring teams will need to consider helping to cover operations aimed at limited numbers of yards at Dale Farm or Hovefields.

Such small-scale evictions took place at Hovefields in 2005, and are the subject of allegations against Constant in the dossier **Complaint Against Constant & Co**, copies of which have gone to the BDC, Essex police, Ministry of Justice and others.

A positive outcome of this week's contact is that so many Save Dale Farm Campaign supporters offered to take part, notably those who have experience in police diversity training.

As a result, it looks like we now have a growing number of potential monitoring teams. This will make it easier to cover smaller evictions, deploying one or two teams at a time, and give us all more confidence about coverage at any future, large-scale eviction at Dale Farm.

Bear in mind that no eviction will take place without prior notice through delivery of a 28-days warning letter. In the case of Dale Farm, a pressing objective of discussions with the BDC and SS is to reach agreement on the Wickford churches' offer to take vulnerable residents into shelter at church halls on the first day of what could be a week-long operation - the biggest of its kind ever undertaken against Travellers.

Civil Contingencies Act

The sheer scale of the Dale Farm eviction calls into focus the possibility that this should be regarded, and officially recognized, as an emergency under the terms of the Civil Contingency Act. The re-accommodation of those made homeless,

at least on a temporary basis, might then have to be undertaken by the local authority and the emergency services.

Certainly this is yet another topic that should be raised with the BDC and SS, as it has been already in an informal way with Essex Fire and Rescue, Ambulance Service and Red Cross.

Definition of an emergency under the Act is as follows:-

(1a) An event or situation which threatens serious damage to human welfare in a place in the UK.

The Act says a major incident may be declared by any officer of one of the emergency services, the NHS or a local authority, if that officer believes the following (among others) are threatened:

- a) loss of human life
- b) human illness or injury
- c) homelessness
- d) damage to property

Monitoring Teams

Below I have attempted to define and list the possible Monitoring Teams that would be available, with their contacts.

Can each potential Monitoring Team confirm that:

i) they wish to send a representative to the proposed next meeting with Essex police

ii) informed of the 28-days notice, they will be able to cover the planned Dale Farm eviction

iii) the team would be willing to attend any small-scale eviction attempted at Dale Farm or Hovefields, possibly on a rota basis with other teams

1 Amnesty International (Randolphe Palmer)

2 Essex University Human Rights (Leticia Osorio)

3 Gypsy Council (Candy Sheridan)

4 GTAG Sussex (Jake Bowers, Michelle Buck)

5 Menter (John Day)

6 National Traveller Action Group (Cliff Codona)

7 Drimston Trust (Ann-Marie)

In addition, Wickford churches might want to form a team and there are as many individuals as represented by the groups above who have already volunteered to act as Human Rights Monitors, including Lord Avebury and Nick Harvey MP.

The UN Advisory Group on Forced Evictions may also be able to field a team for deployment in Essex, among them Romani members.

Grattan